

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BRIAN SMITH,

Defendant-Appellant.

UNPUBLISHED

December 17, 2002

No. 234910

Wayne Circuit Court

LC No. 00-007760

Before: O’Connell, P.J., and White and B. B. MacKenzie*, JJ.

PER CURIAM.

Defendant appeals as of right from his conviction, following a bench trial, of resisting or obstructing a peace officer, MCL 750.479. The trial court sentenced defendant to serve twelve months’ probation. We affirm.

Defendant argues that the prosecution failed to present sufficient evidence that he resisted or obstructed a police officer. We disagree.

Due process requires the prosecution in a criminal case to introduce sufficient evidence to justify a trier of fact in its conclusion that the defendant is guilty beyond a reasonable doubt. *People v Breck*, 230 Mich App 450, 456; 584 NW2d 602 (1998). To determine if the prosecution presented sufficient evidence to sustain a conviction, this Court must view the evidence “in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt.” *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999), quoting *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, mod on other grounds 441 Mich 1201 (1992).

The “resisting and obstructing” statute MCL 750.479, provides in relevant part:

Any person who shall knowingly and willfully . . . obstruct, resist, oppose, assault, beat or wound . . . any person or persons authorized by law to maintain and preserve the peace, in their lawful acts, attempts and efforts to maintain, preserve and keep the peace shall be guilty of a misdemeanor [MCL 750.479.]

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

To survive a sufficiency of the evidence challenge, the prosecution must present adequate evidence that the defendant “obstructed” or “resisted” a police officer while that officer was attempting to keep the peace. *People v Vasquez*, 465 Mich 83, 88; 631 NW2d 711 (2001). To resist or obstruct, the defendant must present a threat of, or actual, physical interference. *Id.* at 90. Contrary to defendant’s argument, the statute does not require that the defendant resist *arrest*, or that the defendant know he is being arrested—it is adequate for the defendant to “obstruct” the officer in the discharge of his duty. MCL 750.479. The primary purpose of the resisting and obstructing statute is to protect officers from physical harm during commission of their duties. *Vasquez, supra* at 92.

Here, the prosecution presented testimony from four police officers that they were at the bar to break up a large fight. One officer testified that all officers on the scene, including him, were in uniform. The officer testified that he attempted to physically remove defendant from kicking and stomping a man on the ground and that he told defendant to stop and to “back off.” The officer further testified that in response, defendant hit him in the head with his forearm. In addition, all four officers testified that defendant could not be restrained and continued to struggle with the officers until he was sprayed with mace and taken down to the ground.

Viewing this evidence in the light most favorable to the prosecution, we conclude that a rational trier of fact could have found beyond a reasonable doubt that defendant resisted or obstructed the officers while they were attempting to keep the peace. *Carines, supra* at 757; *Vasquez, supra* at 88.

Affirmed.

/s/ Peter D. O’Connell
/s/ Helene N. White
/s/ Barbara B. MacKenzie